law, and of Justice Holmes and Judge Parker, upholding it, presents an interesting comparison of different lines of logic. For this reason, as well as for the importance of the case, they are worthy of much study.

REASONABLENESS IN LEGISLATIVE REGULATION OF FARES.

It is well established that where a railroad is deprived by a legislature of the power to charge reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, the company is deprived of the lawful use of its property, and thus, in effect, of the property itself, without due process of law. *Chicago & St. P. R. Co. v. Minn.,* 134 U. S. 418, 458. But as to what constitutes reasonableness in rate regulations, the courts are not wholly clear. In the recent Massachusetts case of *Comm. v. Interstate St. R. Co.,* 73 N. E. 530, a statute requiring that street railroads shall carry public school children at half rates is held valid. The company in this case offered to show that the average cost of transportation per passenger was more than one-half its regular rates. But the court argues that the company can make good any loss, by simply raising the regular rate of fare. This assumes as an economic truth that railroad profits are proportional to rates charged. And it is hard to reconcile this argument with the court's further statement that if the law were one which "would cause expense to street railway corporations, which they must bear themselves or put upon other classes of passengers in the form of increased fares to make good the loss," it would be unconstitutional. At all events, the court bases its judgment as to "reasonableness" on the fact that the company's business *as a whole* is not shown to be rendered unprofitable.

This holding finds some support in *Missouri R. Co. v. Smith,* 60 Ark. 221, where it was held that rates imposed are not necessarily unreasonable because they are unrenumerative on a certain portion of the line. This is true even though the unrenumerative subdivision was once a separate road. *St. Louis & S. F. R. Co. v. Gill,* 156 U. S. 649. On the other hand, a state cannot justify unreasonably low rates for domestic transportation, considered alone, on the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control. *Smyth v. Ames,* 169 U. S. 541. And it is said that a state's regulation of charges is not to be measured by the aggregate profits, determined by the volume of its business, but by the question whether any particular charge to an individual is, considering the service rendered, an unreasonable exaction. The question is not how much one makes out of his volume of business, but whether in each transaction the charge is an unreasonable exaction for the service rendered. Having a right to do business, one has a right to charge for each separate service that which is a reasonable compensation therefor, and the legislature may not deny him such reasonable compensation. *Per* Mr. Justice Brewer, in *Cotting v. Godard,* 183 U. S. 95.

Since the Massachusetts justices' reject the average cost per passenger as a criterion of reasonableness in charges, it would seem incumbent upon them to present some rule of mathematics whereby the points they suggest could be applied in estimating the reasonableness of rates. Their reasoning is liable to the criticism made by another court, where an effort to show that a probable increase in passengers would make up for a reduction in rate was held to furnish no reliable basis for decision, being "too speculative an argument for acceptance." *Milwaukee Electric R. Co. v. Milwaukee,* 87 Fed. 577, 578.

THE MEASURE OF DAMAGES IN CONVERSIONS BY STOCK BROKERS.

The ease with which the English system of common law can be molded to meet the exigencies of modern business is aptly illustrated in the evolution of the rule of damages in conversion, where the subject of the conversion is liable to rapid fluctuation in value, as is the case with stocks or bonds in the hands of a broker. Out of a conflict which seemed for the time utterly hopeless, the courts have gradually produced a rule which is now being rapidly seized upon as affording a just and safe criterion. This is stated with extreme lucidity in the twin cases of *Federal Stock & Grain Co. v. Wiggins,* 77 Conn. 507, and *Ling v. Malcom,* 77 Conn. 517. Both cases arose out of an unauthorized conversion of stocks in the hands of a broker, and the rule was there given as follows: "The correct measure of the plaintiff's damage was, therefore, the excess, if any, over the price realized (at the sale on June 10th) of the lowest sum for which he could have placed the stocks after notice of the sale, had he given an order to that effect with reasonable promptness; or, in case of fluctuations of market price between the wrongful sale and the latest day to which it would have been reasonable to defer a repurchase, the difference, if any, between the price obtained when the shares were converted and the highest market price, in excess thereof, attained during that period."

Three rules for the computation of damages in cases of this character have been adopted by the various courts. In a few states it is held that the value of the stock at the time of the conversion should furnish the standard of measurement. *Freeman v. Harwood,* 49 Me. 195; *Baltimore Ins. Co. v. Dalrymple,* 25 Md. 269; *Brylan v. Huguet,* 8 Nev. 345. It is obvious, however, that this rule leaves the customer at the mercy of his broker, and the rule has received but limited indorsement.

The first rule to be adopted by influential courts was that damages for the conversion of stock should be computed upon the basis of the highest price intermediate the conversion and the time of trial. This rule originated in, and is still followed by, the English courts. *Cud v. Rutts,* 1 P. Wms. 572; *Harrison v. Harrison,* 1 C. & P. 412, 11 E. C. L. 436; *Owen v. Routh,* 14 C. B. 372. When cases involving the point arose in the United States the tendency was to follow the English cases. *Romaine v. Allen,* 26 N. Y. 309; *West v. Pritchard,* 19 Conn. 212; but the rule was found to be inequitable in many cases, as it practically allowed the